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Attorneys for Plaintiffs (additional counsel listed on following page)

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Equality Arizona; and S.C., by their mother
and next friend Carol Brochin;

Plaintiffs,

v.

Kathy Hoffman, in her official capacity as
Arizona Superintendent of Public Instruction;
Lucas Narducci, Daniel P. Corr, Calvin Baker,
Jill Broussard, Christine Burton, Rita H.
Cheng, Michele Kaye, Janice Mak, Armando
Ruiz, and Patricia Welborn, each in his or her
official capacity as a member of the Arizona
State Board of Education,

Defendants.

No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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14 *Pro hac vice application forthcoming
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INTRODUCTION

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2 1. This action seeks to enjoin enforcement of a facially discriminatory and
3 harmful Arizona statute, A.R.S. § 15-716(C), which prohibits instruction that “[p]romotes
4 a homosexual life-style” or “[p]ortrays homosexuality as a positive alternative life-style” in
5 public school curriculum on HIV/AIDS. That prohibition violates the Equal Protection
6 Clause of the Fourteenth Amendment to the U.S. Constitution by singling out a class of
7 students who are not heterosexual—including those who are lesbian, gay, bisexual,
8 transgender,¹ or queer (LGBTQ)—for negative treatment based on their sexual orientation,
9 without imposing any comparable restriction on instruction about heterosexual people.

10 2. By classifying on the basis of “homosexuality,” the challenged statute (the
11 “Anti-LGBTQ Curriculum Law”) facially discriminates against non-heterosexual students
12 on the basis of sexual orientation and places them in an expressly disfavored class. The
13 negative impact is significant, communicating to teachers and students that there is
14 something so undesirable, shameful, or controversial about “homosexuality” that any
15 positive portrayal of non-heterosexual people or relationships must be barred. The Anti-
16 LGBTQ Curriculum Law also forbids medically accurate instruction that “[s]uggests that
17 some methods of sex are safe methods of homosexual sex.” A.R.S. § 15-716(C). By
18 forbidding the presentation of medically accurate, age-appropriate information critical for
19 the health and safety of LGBTQ students, without imposing any comparable restriction on
20 information about heterosexual people, the law deprives LGBTQ students of equal
21 educational opportunities and exacerbates the heightened health risks LGBTQ students
22 already face, including the risk of HIV.

23 3. Arizona schools are not safe for most LGBTQ students. Nearly 80% of
24 LGBTQ students surveyed in Arizona regularly heard homophobic remarks, and 71%
25 experienced verbal harassment in the past year due to their sexual orientation. Research

26
27 ¹ Although transgender people, like people who are not transgender, can have any
28 sexual orientation, there is a significant overlap among transgender people and lesbian, gay,
bisexual and queer people. In addition, A.R.S. § 15-716(C) has been interpreted by some
educators to prohibit discussion of transgender people.

1 shows that laws prohibiting the expression of positive views about “homosexuality” in
2 public schools, like Arizona’s Anti-LGBTQ Curriculum Law, harm LGBTQ students by
3 fostering school climates that stigmatize and isolate LGBTQ youth, putting them at
4 heightened risk of bullying and harassment. In addition, the rate of new HIV/AIDS
5 diagnoses in Arizona increased significantly from 2011 to 2017, particularly among young
6 people.

7 4. The Anti-LGBTQ Curriculum Law was enacted in 1991 to express moral
8 disapproval of “homosexuality” and of non-heterosexual people, and to discriminate against
9 them. It does not serve any legitimate state purpose.

10 5. Plaintiffs have sustained and will sustain irreparable harm due to the Anti-
11 LGBTQ Curriculum Law. The Court should declare this law unconstitutional and enjoin its
12 enforcement.

13 **JURISDICTION AND VENUE**

14 6. Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation
15 under color of state law of rights secured by the United States Constitution.

16 7. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.
17 It may issue a declaratory judgment and grant relief under 28 U.S.C. §§ 2201 and 2202.

18 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants
19 reside in the District of Arizona and the events or omissions giving rise to Plaintiffs’ claims
20 took place in the District of Arizona. Venue is proper in the Tucson Division because a
21 substantial part of the events or omissions giving rise to Plaintiffs’ claims, including those
22 of Plaintiff S.C., occurred in Pima County, Arizona.

23 **PARTIES**

24 9. Plaintiff Equality Arizona is a nonprofit organization whose purpose is to
25 secure, protect, and defend the rights and welfare of LGBTQ people in Arizona. It is a
26 501(c)(3) organization and is incorporated under the laws of the State of Arizona with the
27 legal name Arizona Human Rights Foundation, which does business as Equality Arizona.
28

1 Equality Arizona has members throughout the state, and its membership includes LGBTQ
2 students who attend Arizona public schools.

3 10. Plaintiff S.C. is a twelve-year-old student in seventh grade at a public charter
4 middle school in Tucson, Arizona. S.C. uses the pronouns “they” and “them” and is a
5 member of the LGBTQ community. They identify as “queer” and “not heterosexual.” They
6 previously attended schools in the Tucson Unified School District and plan to attend a
7 public high school in the Tucson Unified School District beginning in ninth grade. S.C.
8 lives with their family in Pima County, Arizona. They are a member of Equality Arizona.

9 11. Carol Brochin is S.C.’s mother. She brings this action on behalf of S.C. under
10 Rule 17(c) as S.C.’s next friend. She is a member of Equality Arizona.

11 12. Defendant Kathy Hoffman is sued in her official capacity as the
12 Superintendent of Public Instruction. The responsibilities of the Superintendent of Public
13 Instruction, an elected official, include exercising supervision over the public school system
14 and serving as a member of the Arizona State Board of Education (“Board of Education”
15 or “Board”). A.R.S. § 15-203; Ariz. Const. Art. XI, Sections 2, 3. Among other things, the
16 Board of Education exercises general supervision over and regulates the conduct of the
17 public school system, adopts rules and policies pertaining to public schools, and enforces
18 laws relating to schools. A.R.S. § 15-203(A); Ariz. Const. Art. XI, Section 2. The Board
19 also administers and is the policymaking body of the Arizona Department of Education.
20 A.R.S. § 15-231(B). The Superintendent of Public Instruction is responsible for the
21 execution of policies of the Board, and she controls the Arizona Department of Education.
22 A.R.S. § 15-231.

23 13. Defendant Lucas Narducci is the President of the Board of Education and is
24 sued in his official capacity.

25 14. Defendant Daniel P. Corr is the Vice President of the Board of Education and
26 is sued in his official capacity.

27 15. Defendant Calvin Baker is a member of the Board of Education and is sued
28 in his official capacity.

1 requiring that certain sex education materials and instruction “shall . . . [p]romote honor and
2 respect for monogamous heterosexual marriage,” Ariz. Admin. Code R7-2-303(A)(3)(b)(v)
3 (“the Regulation”).

4 26. Although Arizona’s local governing boards for school districts are charged
5 with “[p]rescrib[ing] the curricula and criteria for the promotion and graduation of pupils”
6 consistent with the State’s minimum requirements, A.R.S. § 15-341(A)(5), they must do so
7 without violating applicable State statutes and regulations, including the Anti-LGBTQ
8 Curriculum Law and Regulation.

9 **The Anti-LGBTQ Curriculum Law Harms Plaintiffs**

10 27. The Anti-LGBTQ Curriculum Law harms LGBTQ students. It stigmatizes
11 them by creating a state-sanctioned climate of discrimination in schools and prevents
12 LGBTQ students from having educational opportunities equal to those of their heterosexual
13 peers. Students who are not LGBTQ are not singled out for stigma or prohibited from
14 learning relevant, medically accurate information necessary to their health and safety.

15 28. The Anti-LGBTQ Curriculum Law communicates to teachers and students
16 that there is something so undesirable, shameful, or controversial about “homosexuality”
17 that any positive portrayals of LGBTQ people or same-sex relationships must be explicitly
18 barred. The enforcement of the statute, and its very existence, demeans LGBTQ students
19 and denotes their inferiority to heterosexual students. By enshrining into state law that
20 LGBTQ people may only be discussed in a negative light, the State and Defendants instruct
21 all students that LGBTQ people are a dangerous, immoral class of people from whom other
22 students must be shielded. Stigma is associated with lower self-esteem and greater risk-
23 taking behaviors, and it can have devastating and enduring impacts on LGBTQ youth, who
24 face dramatically higher risks for suicide, suicidal ideation, and depression compared to
25 their heterosexual peers. Data from the U.S. Centers for Disease Control indicate that
26 nationally, 29% of LBG youth had attempted suicide at least once *in the prior year*,
27 compared to 6% of heterosexual youth.

29. The Anti-LGBTQ Curriculum Law permits schools to promote inaccurate stereotypes about LGBTQ people, while forbidding the presentation of medically accurate, age-appropriate information about HIV/AIDS that is critical for the health and safety of LGBTQ students, without imposing any comparable restriction on information about heterosexual people. It prevents LGBTQ students from having equal educational opportunities and exacerbates the heightened risks LGBTQ students already face to their health and safety. CDC data show that LGB youth are disproportionately at risk of HIV, sexually transmitted infections, and teen pregnancy. In Arizona, the rate of new HIV/AIDS diagnoses in Arizona increased significantly from 2011 to 2017, particularly among young people. LGB students in Arizona are three times more likely than students who identify as heterosexual to report being raped.

30. The Anti-LGBTQ Curriculum Law also fosters school climates that stigmatize and isolate LGBTQ youth, putting them at heightened risk of bullying and harassment. LGBTQ students in states with laws like Arizona's Anti-LGBTQ Curriculum Law are more likely to report hostile school climates and are less likely to report access to LGBTQ-inclusive school supports.

31. Recent data demonstrate that Arizona schools are not safe for most LGBTQ students. Nearly 80% of LGBTQ middle and high school students surveyed regularly heard homophobic remarks at school such as "fag" or "dyke." In reporting on their experiences *in the past year*, 71% of LGBTQ students surveyed in Arizona experienced verbal harassment, 30% experienced physical harassment, and 12% were physically assaulted due to their sexual orientation.

32. LGBTQ students who lack support and face harassment and discrimination at school experience increased isolation, depression, and risk of suicide and are more likely than their peers to miss school, often in an effort to avoid abuse. These negative experiences can have serious long-term negative impacts on these students' health, education, and well-being.

33. By contrast, LGBTQ students who attend schools allowing equal and open discussion about their identities on par with the recognition and discussion of heterosexual identities are safer and healthier. LGBTQ-inclusive curricula are associated with higher reports of safety, and lower levels of bullying in schools.

34. A positive school climate has been associated with a decrease in depression, suicidal feelings, substance use, and unexcused school absences among LGBTQ students. LGBTQ students in a positive school climate also perform better academically and feel a greater sense of belonging in their school community. The CDC recommends that as part of a positive school climate, schools should “ensure that health curricula or educational materials include HIV, other STD, and pregnancy prevention information that is relevant to LGB youth”

35. Defendant Hoffman, in her official capacity as Superintendent of Public Instruction, has recognized that students “in the LGBTQ community” are “more likely to experience bullying and harassment,” and that “[a] simple step we can take to help reduce discrimination and bullying for these students is to repeal the ‘no promo homo’ law [A.R.S. § 15-716(C)] – legislation that only contributes to an unsafe school environment. This policy is not just outdated, it has always been harmful and wrong.”

36. Notwithstanding this recognition by Defendant Hoffman, repeated legislative attempts to repeal the Anti-LGBTQ Curriculum Law have failed, and the State and Defendants continue to enforce the law.

37. Through the Anti-LGBTQ Curriculum Law, and Defendants’ enforcement of it, the State and Defendants discriminate against LGBTQ students and violate their well-established legal obligations to provide equal educational opportunities to all students, including students who identify as LGBTQ.

Equality Arizona

38. Equality Arizona is a nonprofit statewide advocacy organization for LGBTQ people, and it has members throughout the state. The Anti-LGBTQ Curriculum Law inflicts serious and ongoing harm against Equality Arizona members.

39. Equality Arizona brings this action based on associational standing on behalf of its members. Equality Arizona's members include LGBTQ students who attend, have attended, or will attend Arizona public schools, including Plaintiff S.C. Because Equality Arizona seeks only declaratory and injunctive relief, individual participation of Equality Arizona members is not required.

40. Members of Equality Arizona have experienced the harmful effects of the Anti-LGBTQ Curriculum Law. For example, Equality Arizona member A.A.² is a fifteen-year old gay student in ninth grade at a public high school in the greater Phoenix area. A.A. has experienced the harmful effects of the Law and continues to be harmed by it.

41. Although A.A. was not open about his sexual orientation when he was in middle school, he experienced bullying and verbal harassment based on his perceived sexual orientation. Other students repeatedly called him "fag" and used other homophobic slurs, such as calling him "gay" in a derogatory way.

42. When he was in sixth grade, an incident of name calling made A.A. so upset that he began to cry at school. He sought help from the school counselor, who told him to leave and sent him back to class while he was still crying.

43. A.A. came out as gay to family members and friends the summer before he began ninth grade.

44. A.A. is a member of his high school's Gay Straight Alliance club, and he was elected president of the club for the 2019-2020 year. In the fall of 2018, A.A. was elected to his school's homecoming court, which made him visible in the larger school community as a gay student.

45. After homecoming, A.A. began to experience bullying and harassment based on his sexual orientation and for being perceived as insufficiently "masculine" by other boys, which is a stereotype associated with gay males. For example, when he uses the locker room to change clothes for physical education class, other boys frequently taunt him for

² To preserve privacy, the Complaint uses the pseudonym A.A.

1 being gay, and A.A. has had clothes and other objects thrown at him in the locker room.
2 A.A. is not able to avoid using the locker room, as he is required to change his clothes for
3 physical education class.

4 46. At school, A.A. is enrolled in a weekly health class, which is part of physical
5 education and is required for graduation. Boys and girls are taught health separately. The
6 same boys who harass A.A. in the locker room during physical education are also in his
7 health course. In March 2019, A.A.'s health class began a unit of sex education, which A.A.
8 believes will include HIV/AIDS instruction.

9 47. A.A. has heard from older students who have previously taken this class that
10 when students have asked about safe sex for gay people, the teachers avoid answering,
11 saying "we can't really talk about that" or ignoring the questions. A.A. is afraid to ask
12 questions relevant to LGBTQ people for fear that his questions will lead to further
13 harassment and bullying from his peers.

14 48. The written policies of A.A.'s school district on "family life" education,
15 which includes instruction in sex education and HIV/AIDS instruction, explicitly
16 incorporate the Anti-LGBTQ Curriculum Law and Regulation.

17 49. A.A. is worried that he will not be able to learn medically accurate
18 information in school, including in his health class, that will keep him safe and healthy.

19 50. A.A. believes that if teachers were permitted to discuss LGBTQ people on
20 the same terms as heterosexual people, including during sex education and HIV/AIDS
21 instruction, other students at his school would realize that being LGBTQ is something that
22 is acceptable to talk about, and not a source of shame or ridicule. A.A. believes that it would
23 be easier for him to feel safe in school, including in the locker room, if his teachers were
24 not restricted by the Anti-LGBTQ Curriculum Law.

25 51. A.A. would like to advocate within his school district for an LGBTQ-
26 inclusive HIV/AIDS curriculum, but the Anti-LGBTQ Curriculum Law makes such
27 advocacy futile.
28

1 **Plaintiff S.C.**

2 52. Plaintiff S.C. is a twelve-year-old student in seventh grade at a public charter
3 middle school in Tucson, Arizona. They identify as “queer” and “not heterosexual.”

4 53. When their family moved to Tucson in 2014, S.C. and their brother, who is
5 one grade older than S.C., began attending a public elementary school in the Tucson Unified
6 School District (“TUSD”). S.C. learned about the Anti-LGBTQ Curriculum Law in fourth
7 grade, when their brother was taking the “family life” curriculum, and told S.C. and their
8 mom they were not allowed to talk about “homosexuality” in the class. At the time, S.C.
9 was beginning to understand their sexual orientation, and learning about the law made them
10 feel less accepted by their school.

11 54. S.C. took the elementary school family life curriculum, which did not include
12 any mention of LGBTQ people in discussions of relationships, family structures, behaviors,
13 and HIV/AIDS prevention.

14 55. The materials provided to teachers and parents about TUSD’s elementary
15 school family life curriculum contain the “Arizona Guidelines for Sex Education,” which
16 explicitly incorporate the Anti-LGBTQ Curriculum Law and Regulation.

17 56. In sixth grade, S.C. began middle school at a public middle school in TUSD.
18 They experienced bullying from classmates because of their perceived sexual orientation.
19 For example, S.C. was repeatedly called a “stupid gay kid” and “faggot” by other students.
20 S.C. was not supported by teachers or administrators when they shared what had been
21 happening to them, and did not feel safe at the school as an LGBTQ person. S.C. frequently
22 went to the school nurse’s office because they were so upset from the harassment and
23 bullying.

24 57. As a result of the harassment and bullying S.C. experienced, S.C. and their
25 brother transferred to a public charter middle school in October of S.C.’s sixth grade year.

26 58. For ninth grade, S.C. plans to attend Tucson High Magnet School, a public
27 high school in TUSD.
28

59. At Tucson High Magnet School, S.C. will be required to take a health education course to graduate.

60. The materials provided to teachers and parents about TUSD's high school family life curriculum, which includes sex education, state that HIV/AIDS instruction will be taught separately "using the State recommended curricula." These materials contain the "Arizona Guidelines for Sex Education," which explicitly incorporate the Anti-LGBTQ Curriculum Law and Regulation.

61. Because they will take curriculum subject to the Anti-LGBTQ Curriculum Law in high school, S.C. will face further stigma and will be denied equal educational opportunities because of the Law.

CLAIM FOR RELIEF

U.S. Constitution Amendment XIV, 42 U.S.C. § 1983 Denial of Equal Protection on the Basis of Sexual Orientation

62. Plaintiffs incorporate by reference and reallege the allegations in paragraphs 1 to 61 as though fully set forth here.

63. Plaintiffs state this claim against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief. At all relevant times, Defendants have acted and continue to act under color of state law.

64. The Fourteenth Amendment provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

65. A.R.S. § 15-716(C) and Ariz. Admin. Code R7-2-303(A)(3)(b)(v) violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by discriminating against non-heterosexual students, both facially and as applied.

66. Despite Defendant Hoffman's recognition of the harms that the Anti-LGBTQ Curriculum Law imposes on LGBTQ students, Defendants continue to enforce the Law and Regulation.

67. The Anti-LGBTQ Curriculum Law and Regulation single out non-heterosexual students for differential and adverse treatment on the basis of their sexual

1 orientation. The law prohibits positive discussion of “homosexuality” in HIV/AIDS
2 instruction without imposing any similar restriction on discussion of heterosexuality or
3 heterosexual people. The Regulation requires that instruction on sexual intercourse
4 “shall . . . [p]romote honor and respect for monogamous heterosexual marriage,” but does
5 not require instruction that promotes honor or respect for monogamous same-sex marriage.
6 The Law and Regulation stigmatize LGBTQ students, encourage teachers and classmates
7 to view them as inferior, harm their long-term health and well-being, and deny them equal
8 educational opportunities on the basis of their sexual orientation.

9 68. The Anti-LGBTQ Curriculum Law also singles out non-heterosexual students
10 for differential and adverse treatment on the basis of their sexual orientation by prohibiting
11 presentation of medically accurate information about “homosexual sex” and
12 “homosexuality” during HIV/AIDS instruction, even when such information serves
13 important educational purposes, while imposing no similar restrictions on discussion of
14 heterosexuality or heterosexual people. This also stigmatizes LGBTQ students and harms
15 their long-term health and well-being, including by denying them equal educational
16 opportunities to potentially lifesaving information about HIV/AIDS prevention on the basis
17 of their sexual orientation.

18 69. The Anti-LGBTQ Curriculum Law and Regulation have contributed to the
19 creation of an anti-LGBTQ climate in many Arizona public schools. They foster a culture
20 of silence and non-acceptance of LGBTQ students and discourage school officials from
21 complying with their obligations to treat all students equally, without regard to sexual
22 orientation.

23 70. The Anti-LGBTQ Curriculum Law and Regulation do not serve any
24 legitimate purpose, pedagogical or otherwise, and are instead rooted in animus toward and
25 moral disapproval of LGBTQ people.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as
28 follows:

1 A. Declaring that A.R.S. § 15-716(C) and Ariz. Admin. Code R7-2-
2 303(A)(3)(b)(v) violate the Equal Protection Clause of the Fourteenth Amendment to the
3 United States Constitution;

4 B. Permanently enjoining Defendants and their agents, officers, employees,
5 successors, and all persons acting in concert with each or any of them from enforcing A.R.S.
6 § 15-716(C) and Ariz. Admin. Code R7-2-303(A)(3)(b)(v);

7 C. Awarding Plaintiffs the costs incurred in pursuing this action, including
8 reasonable attorneys' fees under 42 U.S.C. § 1988 and other applicable laws; and

9 D. Granting such other and further relief as the Court deems just and proper.

10 Dated: March 28, 2019

PERKINS COIE LLP

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff Equality Arizona ; Carol
(s): Brochin

Defendant Kathy Hoffman ,
Arizona Superintendent
of Public Instruction;
Lucas Narducci ,
Member of the Arizona
State Board of
Education; Corr P.
Corr , Member of the
Arizona State Board of
Education; Calvin
Baker , Member of the
Arizona State Board of
Education; Jill
Broussard , Member of
the Arizona State Board
of Education; Christine
Burton , Member of the
Arizona State Board of
Education; Rita H.
Cheng , Member of the
Arizona State Board of
Education; Michele
Kaye , Member of the
Arizona State Board of
Education; Janice Mak ,

**Member of the Arizona
State Board of
Education; Armando
Ruiz , Member of the
Arizona State Board of
Education; Patricia
Welborn , Member of
the Arizona State Board
of Education**

County of Residence: Maricopa
County Where Claim For Relief
Arose: Pima

County of Residence: Maricopa

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II. Basis of
Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of
Principal Parties

(Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

950 Constitutionality of State Statute

VI. Cause of Action:

Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation under state law of rights secured by the U.S. Constitution.

VII. Requested in
Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: /s/ Daniel C. Barr

Date: 3/28/2019

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

